

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LOUANN PEARL HUBBARD, as
personal representative of the estate of
Angie Crystal Dawn Kennedy,

Plaintiff,

Case No. 09-10638-BC
Honorable Thomas L. Ludington

v.

EVENFLO COMPANY, INC.,

Defendant.

ORDER DISMISSING PLAINTIFF'S COMPLAINT FOR LACK OF PROSECUTION

Plaintiff's complaint was removed from state court on February 20, 2009, and Defendant filed an answer on February 27, 2009. The Court entered a case management and scheduling order on April 9, 2009. On February 8, 2010, Plaintiff indicated in a letter to the Court that the parties had reached a settlement. No other activity occurred until October 25, 2010, when the Court issued an order to show cause, indicating that the case would be dismissed unless the parties provided a persuasive reason for it to remain open.

On November 5, 2010, Plaintiff filed a response, affirming that the case had been settled, but requesting an additional ninety days because the settlement funds had not been dispersed. The response further indicated that the Plaintiff is in prison, and that she "previously gave power of attorney to someone" but that person cannot be reached.

On November 10, 2010, the Court issued an order providing the parties an additional thirty days to finalize the settlement. The Court noted that if additional pleadings were not received within that time, the case would be dismissed by the Court. *See* E.D. Mich. L.R. 41.2 (noting that the Court may dismiss a case for lack of prosecution). Nearly five months have passed since the November

10, 2010 order and the only pleading the Court has received is a proposed order for substitution of Defendant's counsel. The proposed order is unnecessary because it seeks to add an attorney who is already the attorney of record for Defendant.

The parties have now had more than a year to finalize their settlement. Moreover, the parties did not respond to the Court's last order within the thirty-day period directed by the Court or the ninety-day period Plaintiff requested. As a result, the case will be dismissed for lack of prosecution.

Accordingly, it is **ORDERED** that Plaintiff's complaint is **DISMISSED** for lack of prosecution. The clerk is directed to close the case.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: April 6, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 6, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS